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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
31083.05US3

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Signature: _____

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Application Number

09/867,200

Filed

05/29/2001

First Named Inventor
Robert H. Scheer

Art Unit

3627

Examiner

Cuff, Michael A.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

x

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

x

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

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attorney or agent of record.

Registration number 35,906

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____



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October 4, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐

*Total of _____ forms are submitted.

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REQUEST FOR PRE-APPEAL REVIEW

In the application claims 4-9 remain pending. Claims 1-3 have been previously canceled.

Pending claims 4-9 presently stand rejected under 35 U.S.C. § 103 as being rendered obvious by the combination of Caveney (U.S. Patent No. 5,608,621) and Tsukishima (U.S. Patent No. 6,535,773).

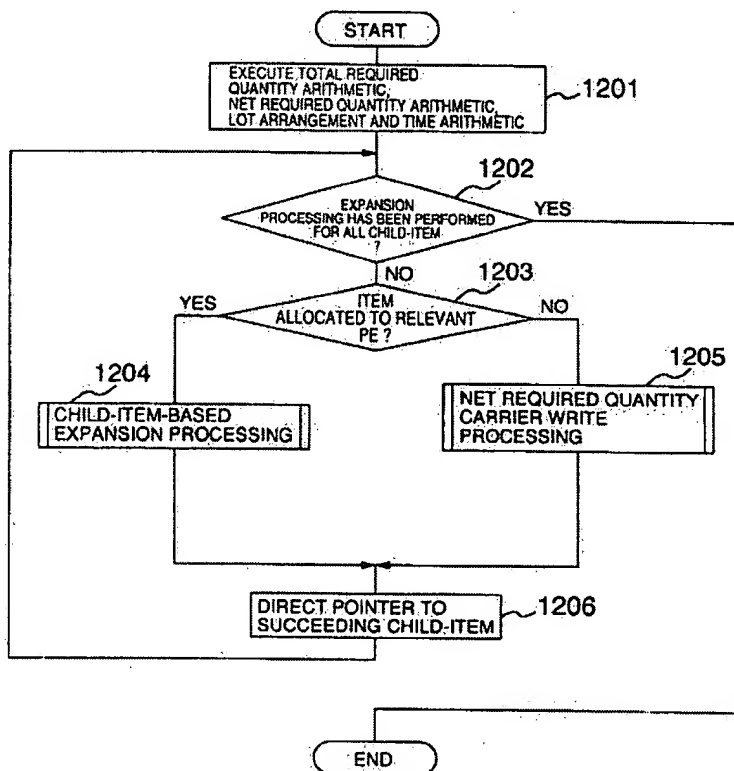
In rejecting the claims, it was acknowledged that Caveney fails to disclose the use of an inventory management system over a plurality of distribution points in a supply chain. It was alleged, however, that Tsukishima discloses in Col. 7, lines 41-67 a part-based expansion arithmetic unit (34) designed to arithmetically determine inventory allotment (shares apportioned), lot arrangement, and lead time as part of an MRP procedure “in order to optimize the supply chain.” As such, it was concluded that it would have been obvious to modify Caveney with an inventory allotment method “over a plurality of distribution points” as taught by Tsukishima “in order to optimize the supply chain.”

Considering now Tsukishima, it is respectfully submitted that Tsukishima, like Caveney, also fails to disclose, teach, or suggest the claimed using a critical stocking ratio for each of the plurality of items to apportion the total quantity of each of the plurality of items which can be held in inventory over the forecast period in shares to the plurality of distribution points in the supply chain. While Tsukishima may use the word “allotment” in cited to Col. 7, lines 41-67 it is respectfully submitted that Tsukishima is not using the word “allotment” in any manner that is relevant to the claimed using the critical stocking ratio for each of a plurality of items to apportion the total quantity of each of the plurality of items which can be held in inventory over the forecast period in shares to the plurality of distribution points in the supply chain. Rather, in Col. 7, lines 41-67, Tsukishima is merely referring to the fact that the process performed by the

relied upon "part-based expansion" arithmetic unit (34) functions to allot inventory items between one of a plurality of processor elements ("PEs") which together function to determine types of items, quantities of items, and delivery terms for items required for timely manufacture of an article. That the inventory "allotment" generally alluded to in the relied upon Col. 7, lines 41-67 is nothing more than a process for "allotting" items to one of a plurality of processor elements ("PEs") is particularly described in Col. 14, lines 1-37 and illustrated in the "part-based expansion" process flow chart of Fig. 12, which is reproduced below, as element 1203:

FIG. 12

FLOW CHART OF PART-BASED EXPANSION ARITHMETIC PROCESSING



Thus, when Tsukishima is considered in its entirety as is required, it is respectfully submitted that it is evident that the "allotment" disclosed within Tsukishima is nothing more than a process

for allocating inventory among different processor elements towards determining type of items, quantities of items, and delivery terms for items required for timely manufacture of an article.

As such, it is respectfully submitted that the “allotment” disclosed within Tsukishima and relied upon in the rejection of the claims fails to have any relevance to *using a critical stocking ratio for each of a plurality of items to apportion the total quantity of each of the plurality of items which can be held in inventory over the forecast period in shares to the plurality of distribution points* in the supply chain as is expressly recited within the claims at issue.

Based upon the foregoing it is respectfully submitted that neither Caveney nor Tsukishima disclose, teach, or suggest at least those claimed elements directed to performing inventory management over a plurality of distribution points in a supply chain, particularly the claimed *using a critical stocking ratio for each of a plurality of items to apportion the total quantity of each of the plurality of items which can be held in inventory over the forecast period in shares to the plurality of distribution points* in the supply chain. Accordingly, it is respectfully submitted that the combination of Caveney and Tsukishima cannot be said to disclose all of the elements claimed as is required to support a *prima facie* case of obviousness. For at least this reason it is respectfully submitted that the rejection of the claims under 35 U.S.C. § 103 must be withdrawn.

It is additionally submitted that the Appellant concurs with the statement set forth within the Advisory Action that the Appellant’s own application discloses the claimed using a critical stocking ratio to apportion the total quantity of each of the plurality of items which can be held in inventory over the forecast period in shares to the plurality of distribution points in the supply chain. It is, however, respectfully questioned how the fact that the Appellant’s own application discloses the claimed elements demonstrates where the reference being relied

upon, namely Tsukishima, discloses the same (which Tsukishima does not). Accordingly, since citing to the Appellant's own application neither demonstrates where the claimed elements are shown in the prior art nor demonstrates that the claimed elements are "common sense" as asserted, it is respectfully submitted that the rationale for rejecting the claims set forth within the Advisory Action, which relies upon the Appellant's disclosure to the exclusion of the cited references, fails to provide a rational explanation as to why and how one of ordinary skill in the art would have utilized the cited references to arrive at the exact invention that is set forth within the claims as is required to maintain a rejection under 35 U.S.C. § 103. *See* MPEP § 706.02(j) and MPEP § 2144.03 citing In re Lee, 277 F.3d 1338, 1343-46 (Fed. Cir. 2002) (In reversing the Board's decision, the court stated "'common knowledge and common sense' on which the Board relied in rejecting Lee's application are not the specialized knowledge and expertise contemplated by the Administrative Procedure Act. Conclusory statements such as those here provided do not fulfill the agency's obligation....The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies."'). For this still further reason it is respectfully submitted that the rejection of the claims must be withdrawn.

Respectfully Submitted;



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